

DisabilityRights



ARKANSAS

Protection and Advocacy and Client Assistance Program
Services in Arkansas
Fiscal Year 2017

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BACKGROUND

DISABILITY RIGHTS ARKANSAS (DRA) is a private non-profit agency located in Little Rock, Arkansas. Since 1977, the Governor of Arkansas has designated DRA the independent Protection and Advocacy system for persons with disabilities in Arkansas. DRA operates under authority outlined in federal law, is funded primarily by the federal government and is governed by a Board of Directors. DRA collaborates with other disability rights and civil rights organizations, service agencies, the private bar and legal services to accomplish identified goals and objectives. DRA's services are offered statewide at no cost to individuals with disabilities.

Protection & Advocacy for Individuals with Mental Illness (PAIMI)

PAIMI serves individuals with a diagnosis of serious mental illness. PAIMI prioritizes services to individuals receiving care and treatment in a facility, and has a mandate to investigate complaints of neglect and abuse. See the Protection and Advocacy for Individuals with Mental Illness Act of 1986, as amended, 42 U.S.C. § 10801 *et seq.*

Protection & Advocacy for Individuals with Developmental Disabilities (PADD)

PADD serves individuals with developmental disabilities, including intellectual disabilities, autism, epilepsy, cerebral palsy and neurological impairments. A developmental disability is a mental or physical impairment beginning before the age of 22, which is likely to continue indefinitely, limits certain major life activities and reflects a need for special care, treatment and/or individualized planning. See the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. § 15001, *et seq.*

Client Assistance Program (CAP)

CAP assists individuals with disabilities who have questions or have encountered problems while receiving or applying for vocational rehabilitation (VR) services from state VR agencies. CAP also advocates for those who receive services from Independent Living Centers (ILCs), The Division of Services for the Blind (DSB), and for those applying for or receiving services from Tribal VR offices. See the Rehabilitation Act of 1973, as amended, Title I, Part B, Sec. 112, 29 U.S.C. § 732.

Protection & Advocacy of Individual Rights (PAIR)

PAIR serves individuals with disabilities who do not qualify for the protection and advocacy services described above. It is not limited to individuals with a specific disability or facing a certain issue. See the Protection and Advocacy of Individual Rights Program of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794e.

Protection & Advocacy for Assistive Technology (PAAT)

PAAT serves individuals with disabilities with issues related to assistive technology devices and services. This includes investigating the denial of, and negotiating access to, assistive technology devices and services, as well as educational outreach efforts. See the Assistive Technology Act of 2004, 29 U.S.C. § 3004.

Protection & Advocacy for Beneficiaries of Social Security (PABSS)

PABSS serves individuals with disabilities who receive Social Security Disability Insurance (SSDI) or Supplementary Security Income (SSI) and who are trying to return to work, obtain employment, or

receive certain employment-related training and services. PABBS educates beneficiaries about Social Security’s work incentives, and provides vocational rehabilitation and employment services advice. Additionally, PABSS assists beneficiaries with understanding their rights regarding representative payees. See the Ticket to Work and Work Incentives Improvement Act of 1999, as amended, 42 U.S.C. § 1320b-21.

Protection & Advocacy for Traumatic Brain Injury (PATBI)

PATBI serves individuals diagnosed with a traumatic brain injury (TBI). PATBI provides advocacy support to individuals with TBI and their families. See the Traumatic Brain Injury Act, authorized as part of the Children’s Health Act of 2000, 42 U.S.C. § 300d-53.

Protection & Advocacy for Voting Access (PAVA)

PAVA educates and assists individuals with disabilities so they may enjoy full participation in the electoral process. These efforts include ensuring physical accessibility of polling places and informing individuals about the rights of voters with disabilities. See the Protection and Advocacy for Voting Access program of the Help America Vote Act of 2002, 42 U.S.C. § 15461-15462.

CLIENTS

Arkansas is known for having one of the highest percentages of residents with disabilities in the country, although because its total population is relatively low, Arkansas is a minimum allotment state for the federal grants that fund DRA’s work. The United States Census Bureau’s 2016 American Community Survey indicates the state’s total population to be 2,968,472, and a 2013 Disability Status Report from Cornell University shows the overall rate of disability in Arkansas to be 17%. The following chart provides a breakdown of the 1,062 service requests received by DRA in fiscal year 2017, by disability and by program.

Clients by Age and Disability

DRA assisted individuals from infant to age 87 in FY2017. A breakdown of the age demographic showed 59% of the service requests represented individuals between the ages of 19 and 64, which is often considered “working age”, while 5% of the service requests represented individuals 65 and older and 36% of the service requests represented individuals 18 and younger.

The following chart shows a breakdown of the service requests by an individual’s disability:

Disability	Number of Service Requests	Percentage of total Service Requests
Mental Illness	302	28%
Developmental Disability	278	26%
Physical/Orthopedic	198	19%
Visual/Hearing	57	5%
Traumatic Brain Injury	39	4%
Learning Disabilities	45	4%
Other Disabilities	143	14%

SERVICE REQUESTS

DRA received 1,062 requests for services in FY2017, a decrease of 13% over the 1,222 requests received in FY2016. The charts below show the distribution of the requests by grant funding and by priority. The “none” category represents requests for services that did not fall into one of the established priority areas; requests that do not meet a priority are still provided assistance, but usually will be provided with information and referral services rather than case-level advocacy.

Service Requests by Program

Program Funding Source	PAIMI	PADD	CAP	PAIR	PAAT	PABSS	PATBI	PAVA
Count of Service Requests	261	232	63	399	23	48	32	4

Priority Areas Covered by Service Requests

Priority Area	Count of Service Requests
Abuse, Neglect, and Exploitation	136
Community Integration and Access	268
Education	231
Employment	141
None	286

Service Requests in FY2017 reflect the most common problem areas by far to be education (214 requests), followed by rights violations (187 requests), abuse and neglect allegations (tied at 73 requests each), rehabilitation services (70 requests), employment (65 requests), and housing (58 requests). DRA also continues to receive numerous calls related to program access, government benefits and services, architectural accessibility, and healthcare issues. Information and assistance is provided to clients wanting to return to work and clients wanting to leave institutional settings to live in the community. DRA monitors for abuse and neglect at facilities housing individuals with disabilities, including the state’s five Human Development Centers, and continues to be a primary resource for parents/guardians requesting assistance with special education issues and community-based services.

Whenever possible, DRA seeks to inform and educate clients so they may effectively self-advocate. In addition to empowering an individual to resolve issues for themselves, this serves to make the relationship between the client and the other party less adversarial than when a third party such as DRA intervenes, and also is a means by which DRA can serve more individuals with fewer resources.

Case Examples of DRA work in FY2017

Example 1: Disability Rights Arkansas (DRA) investigated an allegation involving the prolonged isolation of a PAIMI-eligible client at a youth services facility. DRA requested and reviewed documents, interviewed relevant individuals, and repeatedly raised concerns to the Arkansas Division of Youth

Services (DYS) and South Arkansas Youth Services (SAYS), a private provider who had a contract with the state to provide treatment to youth in state custody. DRA subsequently substantiated the claim of abuse and neglect. DRA issued two letters regarding its findings to DHS and SAYS, and met with the DHS to urge the promulgation of formal policies limiting the practice of isolation of minors. While a formal policy has not been promulgated as of the closing of this client's case, the practice of prolonged isolation has ceased at the secure treatment facilities that were operated by SAYS.

Example 2: A 15-year-old committed to a locked juvenile treatment facility was receiving minimal educational services in his dormitory, rather than in the school building. A Section 504 plan developed by his home school district was not being followed, and no efforts were being made by DHS to evaluate this client for special education eligibility. The client was also engaging in physical self-harming behavior. DRA brought the client's situation to the attention of both DHS and the management staff of the private contractor providing services at this facility. Neither DHS nor the provider took action. DRA then contacted the client's guardian and assisted her in writing a request for an evaluation for special education eligibility. DRA provided continued legal representation and advocacy throughout this process, and the client was subsequently evaluated and identified as a student eligible for special education services. DHS and the provider were compelled to conduct a comprehensive psychological evaluation, a speech-language evaluation, and an occupational therapy evaluation, resulting in an Individualized Educational Program (IEP) and Behavior Intervention Plan (BIP) being developed. The home school district was included in the latter stages of this process, and the client was discharged shortly after the evaluation process. The client has since made a successful transition out of an institutional setting and back into his community.

Example 3: A client from an underserved part of the state wanted to attend Project Search in Little Rock. Project Search is an internship program that defines a successful outcome as employment in an integrated setting at a minimum of 16 hours a week for minimum wage or higher. The client has an intellectual disability and requires 24/7 attendant care. While the client's vocational rehabilitation counselor advocated for the client to receive needed services, including attendant care, rent and utilities for a living space in Little Rock, and transportation to and from Project Search every day, Arkansas Rehabilitation Services (ARS) refused to provide any rent or utility subsidies, stating the client could reside at the Arkansas Career Training Institute (ACTI) in Hot Springs, which is a residential vocational rehabilitation program an hour away from Little Rock, and receive transportation services to and from ACTI. The client requested an administrative review, whereupon ARS agreed to provide the HUD average rental rate (\$768), but still no utility subsidy or other services. The client then requested DRA's assistance. A DRA attorney attended an (unsuccessful) mediation with the client, then requested a hearing. As a result of DRA's representation at the hearing, the impartial hearing officer ultimately awarded the client a \$1,200/month rental subsidy, a \$500 monthly utility allowance, 24/7 attendant care, transportation, and a food and clothing allowance.

Example 4: A PAIMI-eligible client contacted DRA for assistance with an Americans with Disabilities Act (ADA) issue involving her service animal, which is an American Pit Bull Terrier. The city where she resides enacted a "vicious breed" ordinance, which bans all dogs of certain breeds within the city limits. The city's animal control officers picked up the client's service animal, took it to the city animal shelter, and cited her for violating the vicious breed ordinance, without any complaints or allegations of vicious behavior by the animal. These actions not only deprived the client of access to her service animal, but also caused her to fear for her dog's well-being and life. DRA staff contacted the city and provided them with information from the United States Department of Justice (DOJ) regarding the unlawfulness of the vicious breed ordinance's application against service animals who are not alleged to be actually vicious.

City officials confirmed that the service animal owner's service animal was not, in fact, vicious, and returned the animal to its owner.

Example 5: An individual contacted DRA for assistance after he was rebuffed when he requested a local private college provide an interpreter for a public event. They offered the client a front row seat for the event and stated he could provide his own interpreter, but they were not required to provide one for him because he is not one of their students. A DRA attorney contacted the college's general counsel, after DRA was advised by the person in charge of the event that she had consulted with their human resources staff, as well as counsel, and maintained the college was not responsible for providing an interpreter. DRA received a response from the college, within just a few hours of reaching out to their general counsel, to the effect that the college would indeed be providing an interpreter for this client for the event he wished to attend.

Example 6: A client with a visual impairment received partial assistance from ARS to take classes to prepare for an Emergency Medical Technician (EMT) exam. Upon failing the exam, the client was informed by the EMT licensing agency that she would have to take a refresher course and wait a year to retest. During this interval, the client found a cosmetology program that would provide the classes needed for her to complete coursework towards becoming a licensed cosmetologist and allow her to earn college credit simultaneously. She requested ARS change her employment outcome, so she could receive assistance from ARS to pursue this alternate program; ARS refused, stating she would have to continue with the EMT program if she wanted ARS's assistance. A DRA attorney filed an appeal of this decision, citing not only ARS's refusal to permit the client to change her employment outcome, but also their failure to provide adequate notice regarding their regulatory support for such a decision, as the client was never notified in writing of ARS's decision, nor was she ever told under what rule she was prohibited from amending her Individualized Plan for Employment (IPE). The attorney successfully argued these points during an administrative review, and the client subsequently amended her IPE and attended cosmetology school with ARS assistance.

Example 7: DRA received a request for assistance from the parent of a seven-year-old who exhibited difficulties with transitions and social situations, particularly after special education services were discontinued without a reevaluation and the client was placed in a regular classroom without any supports. The student subsequently began getting suspended, and was ultimately placed in an alternative learning environment (ALE) for behaviors commonly associated with autism. The student was also reportedly placed in restraints during some behavior incidents. The parent requested he be evaluated, but the district reportedly talked her out of it each time she made the request. DRA filed for due process on the student's behalf, whereupon the school district quickly agreed to evaluate the student, provide behavioral supports and move him from the ALE back to a school setting.

Example 8: An individual who uses a wheelchair found the location of his local prosecuting attorney's office inaccessible due to the lack of any accessible parking spaces, and further discovered that a ramp leading to the front entrance was routinely blocked by a truck. DRA contacted the prosecutor to explain the accessibility issues, whereupon the prosecutor requested a copy of the ADA requirements for parking lots. The prosecutor then worked with a contractor to have the parking lot marked with accessible parking spaces (including van accessible parking), which effectively marked off the area the truck had been using that resulted in the ramp being blocked.

Example 9: An individual residing in a small Intermediate Care Facility for Individuals with Intellectually Disabilities (ICF/IID) was threatened with discharge after exhibiting PICA behaviors on a second occasion,

the first occasion having occurred in 2002. The ICF/IID claimed the PICA behaviors were a health and safety issue, and that they would not be able to guarantee his health and safety; they recommended the client be moved to one of the state's five Human Development Centers (HDCs). DRA provided the client with an attorney to represent him in an appeal hearing; the Office of Long Term Care ultimately determined the ICF/IID had not met the burden of proof required for refusing to serve him due to health and safety concerns, and the client was allowed to remain in this lesser restrictive setting, which had been his home for over 20 years.

Example 10: A veteran who had sustained a traumatic brain injury requested DRA's assistance with addressing an incident where the veteran was informed by the staff of a restaurant he was patronizing that he would have to remove his sunglasses to be served. The restaurant had a policy that banned sunglasses in their establishments, and they were unwilling to accommodate the veteran, who wore sunglasses because of vision issues associated with his brain injury. DRA contacted the corporate office of this restaurant chain, and was advised this was a one-time occurrence and that the restaurant staff involved have been trained on the proper way to interact with individuals with disabilities in these types of circumstances. They also sent the client a gift card by way of apology. The client still wished to address the incident further, and so he subsequently secured private counsel to pursue legal action against the establishment.

PROJECTS

Systemic Issues

Arkansas lacks any binding regulation or law on the use of restraint against students with disabilities in the public schools. Although the Arkansas Department of Education issued "guidance" on the use of restraint, the guidance is not binding or mandatory. Many school districts in the state are either unaware of the guidance or refuse to follow the guidance. Thus, students with disabilities continue to be subjected to and at risk of the unsafe, excessive and inappropriate use of restraint at school. This impacts many students with developmental disabilities, particularly those with Autism Spectrum Disorder and other disabilities with behavioral and communication challenges. To address this problem on a systemic level, DRA wrote and published a White Paper to educate the public and advocate for the adoption of binding standards and law related to the use of restraint on students with disabilities in the public school setting. The White Paper was disseminated publicly at the time of its release and continues to be distributed. DRA also met with stakeholders who might be interested in assisting with the development and adoption of the needed binding regulation and law. The release of the White Paper revealed the ongoing need for further education and advocacy around the issue of restraint, reflected in part by some of the public reaction and comments to the White Paper and what is perceived by some in the public as a need to restrain and use corporal punishment for students who have atypical behaviors. The Arkansas Department of Education claims that it is "powerless" to promulgate any regulations, although it had previously done so with respect to time out regulations. DRA intends to use the White Paper as a vehicle to assist in training and raising public awareness and systemic advocacy to obtain the needed enforceable regulations and law.

DRA has continued to monitor and provide public comment on proposed rule changes that impact the education of students with disabilities throughout the state. DRA provided comment on the state's proposed Every Student Succeeds Act (ESSA) plan on two separate occasions and encouraged ADE to review the proposed plan to better reflect the needs of students with disabilities. In addition, DRA

attorneys participated in three task forces that ADE organized to address issues of students with disabilities, including a task force charged with reducing the special education paperwork used by school districts across the state and developing a manual to better explain the process to parents. DRA also participated on a task force to address the education needs of students with disabilities in various correctional settings across the State, and a task force meant to reform the dispute resolution process for students with disabilities. At the meetings, needed reforms were identified, including state regulations that differ from federal requirements, process-related discrepancies, and an overall lack of understanding of due process by both stakeholders and parents. Despite identification of these issues, DRA has not seen any meaningful changes to the process. ADE disbanded this task force without resolution, but did retain an expert to address needed changes to state regulations. DRA will continue to monitor these issues and their impact on students with disabilities. DRA also participated in a Youth Justice Reform Board comprised of judges, DYS staff, and other stakeholders to address the overuse of the juvenile justice system for youth, including those with disabilities, across the state. The board identified a number of issues, and has subsequently joined another group that was also tackling juvenile justice reform. This reconstituted board will continue to meet in 2018, and DRA will continue to participate on this board and advocate for needed changes to the juvenile justice system.

Arkansas has large and small congregate institutional settings for individuals with developmental disabilities, including five state-owned and operated Human Development Centers (HDCs) and approximately 35 private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs). DRA engaged in a multi-pronged approach throughout the fiscal year targeted at ensuring that residents in these institutions were living in healthy and safe conditions, free from abuse and neglect. The HDCs, which are located across the state, serve approximately 958 individuals who have been admitted either by family members or by the State. Many of these individuals have lived in institutional settings for years, and many have significant deficits in communication. DRA developed a regular monitoring schedule for the HDCs to ensure consistent monitoring throughout the year; however, DRA identified two of the HDCs as needing enhanced monitoring due to DRA's knowledge of problems at the facilities related to the use of restraint, shortages of staff and a lack of qualified leadership at the institution. DRA monitored these institutions, interviewed residents and staff, and followed up on concerns identified during monitoring with the institution's management staff and with the director of the state's Division of Developmental Disabilities Services (DDS). Among issues that have been and are being addressed are staff shortages, the need for updated restraint policy, improved psychological services, a better standard of living, access to habilitation services, availability of employment opportunities, transition services, and guardianship issues. One of the two facilities was previously the subject of a report about excessive restraint issued by DRA; while the number of restraints has decreased considerably, DRA continues with enhanced monitoring of this facility to ensure the number of restraints does not creep back up. DRA has also continued to address concerns with DDS regarding the outdated psychological and behavioral interventions favored by long-term staff at this same facility. While multiple barriers exist in addressing these issues, including the remote location of the two institutions under an enhanced monitoring schedule, DRA prioritizes this work to protect these institutionalized residents. DRA also responded to complaints by residents, and addressed these with institution staff.

DRA engaged in systemic advocacy to address ongoing problems and rights violations in the state-operated juvenile justice system. Although many of the youth in those facilities have serious mental illness, some have co-occurring developmental disabilities. DRA monitored the secure juvenile treatment facilities, met with officials from the State's Division of Youth Services (DYS), engaged other stakeholders, and engaged the media to heighten awareness of problems with the services and

treatment provided in the facilities. These problems included a lack of treatment and education services at the facility, as well as upon discharge to the community. The State made some changes to the system, and has represented that it would retain an expert to review its system, improve educational services, and otherwise provide services that will support meaningful transition to the community.

DRA conducted extensive monitoring of settings in which persons with mental illness reside, were placed and/or were committed, including the Arkansas State Hospital (ASH), Psychiatric Residential Treatment Facilities (PRTFs), Juvenile Detention Centers (JDCs), Secure Juvenile Treatment Facilities (SJTFs), Residential Care Facilities (RCFs), and Human Development Centers (HDCs). This monitoring was critical during a time when the Arkansas Department of Human Services (DHS) is undergoing reorganization and there is confusion and a lack of robust oversight by the state. DRA's presence through monitoring and its interactions with clients and facility staff had a positive impact and provided a necessary safeguard/protection against abuse and neglect. DRA followed up with DHS anytime there were concerns in the facilities and with the state's oversight. Over the course of the fiscal year, DRA staff monitored all of the PRTFs in the state, as well as routinely reviewing serious incident reports provided by these facilities, which enabled DRA staff to gain information about practices in these facilities. When a serious incident report raised concerns, DRA would follow up with the facility and with an onsite visit if necessary. Through monitoring, DRA was able to identify concerns with the overmedication of youth in one of these facilities. DRA continues to monitor PRTFs and gather information to develop a systemic strategy to address these concerns.

Throughout the last two years, DRA has engaged in monitoring and data collection at sheltered workshops and DDTCS programs that have a pre-vocational component across the state. DRA monitored these programs to not only ensure the absence of abuse, neglect, and exploitation, but also to ensure that individuals are given meaningful opportunities to obtain competitive, integrated employment. This process began with data collection to better understand the breadth of sheltered workshops in our state, and the effect on our state's disability population, then progressed to collaborating with Arkansas Rehabilitation Services (ARS) to provide guidance to sheltered workshops/DDTCS programs regarding their obligations and restrictions under the new Section 511 regulations. Finally, the sheltered workshops were monitored again to ensure that ARS was fulfilling its obligations under Section 511, and to assist individuals who did not have a relationship with ARS. DRA just released a report of our findings regarding sheltered workshops and DDTCS programs with pre-vocational components in our state, and will include recommendations for future steps the state must take to achieve a more inclusive employment community for individuals with disabilities.

DRA met with Arkansas Rehabilitation Services (ARS) to address a number of topics; chief among them the revision of ARS's policy manual, which requires administrative rule-making. DRA was permitted access to ARS's proposed rules and regulations prior to them being published for public comment, resulting in DRA pointing to a number of problems with the proposed regulations that would require revision to bring the policies into compliance with federal law and regulations. This prevented state rule-making that could have had a detrimental impact on persons with disabilities who could benefit from vocational rehabilitation services.

Coalition Building

DRA is a part of the Developmental Disabilities Network, along with Partners for Inclusive Communities (Partners) and the Arkansas Governor's Developmental Disabilities Council (DDC). As a minimum allotment state, DRA partners with other entities whenever possible, as a means to maximize efficiency

and more effectively utilize our limited resources. These partners include the Arkansas Waiver Association (AWA), AARP, the Arkansas Autism Resource and Outreach Center (AAROC) and Arkansas Advocates for Nursing Home Residents (AANHR). Together, we discuss issues impacting the disability community in Arkansas and how we can best collaborate to address those issues. DRA also works with the Mental Health Consumer Advisory Councils in each congressional district to empower consumers and promote self-determination.

Veterans' Issues

As in 2016, DRA co-hosted an annual conference in 2017 for brain injury survivors under the PATBI grant. The purpose of the conference is to build a strong self-advocacy and support system within the TBI community. DRA also spearheaded a successful effort for Governor Asa Hutchinson to declare March 2017 Brain Injury Awareness month. An average of almost 21,000 service members annually have been diagnosed with traumatic brain injury since 2000, resulting in traumatic brain injury often being referred to as the signature wound of the Iraq and Afghanistan wars.

We hope this report has been beneficial in providing an overview of our programs and services. Please don't hesitate to reach out to us if we can answer any questions or provide you with further information about our work.

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